

Donald Pipkins  
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Debtors in Pro Se

**FILED**

APR 25 2014

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re

DONALD PIPKINS and LORNA

PIPKINS

Debtors.

) Case No. 13-30087 DM

) Chapter 7

) **DEBTORS' MEMORANDUM OF**  
) **POINTS AND AUTHORITIES IN**  
) **SUPPORT OF OBJECTION TO**  
) **TRUSTEE'S MOTION FOR SALE OF**  
) **STRUCTURED SETTLEMENT**  
) **PAYMENTS AND CLAIM OF**  
) **EXEMPTION**

**1. TRUSTEE'S MOTION SHOULD BE DENIED BECAUSE IT LACKS  
JURISDICTION OVER THE ANNUITY SINCE IT BELONGS TO AMTRAK  
AND NOT THE DEBTOR'S ESTATE**

The Manulife Annuity otherwise referred to as the John Hancock Annuity which is the subject of the trustee's motion was issued on or about February 23, 1982 on the measuring Life of Donald Pipkins. The policy was purchased and is owned by AMTRAK as part of personal injury settlement for Mr. Pipkins.

1 The policy further contains a commutation clause for guaranteed payments due after the  
2 life of Donald Pipkins which provides for a 13.25 discount rate, compounded annually. No  
3 annuity payments can be commuted before the annuitant's death. In addition, there are no  
4 lifetime payments that will due or payable after the death of Mr. Pipkins and; any lump sum  
5 payments in on January 20, 2021, 2031 and 2041 payable after his death will be owed and  
6 payable to AMTRAK.

7 Therefore, because the annuity belongs to AMTRAK and is not part of the debtor's  
8 estate, the trustee lacks jurisdiction over the annuity to proceed with any sale. Accordingly, the  
9 trustee's motion should be denied.

10 **2. THE TRUSTEE'S MOTION IS IMPROPER AND UNTIMELY SINCE THE**  
11 **DEBTORS' CASE WAS DISCHARGED ON OR ABOUT JANUARY 16, 2014**

12 The Bankruptcy Court only has jurisdiction over estates which are commenced and  
13 pending in the Bankruptcy Court. Once a case is discharged, the bankruptcy estates is closed and  
14 it releases debtors from personal liability from specific debts and forever prevents the creditors  
15 from ever taking any action against the debtors to collect the debt. *Local Loan Co. v. Hunt*  
16 (1934) 292 U.S. 234, 244.

17 An individual debtor may exempt certain property belonging to the bankruptcy estate. 11  
18 USC Section 522(b). Property bought into a bankruptcy estate by virtue of the trustee's or the  
19 debtor's avoidance powers is available for exemption if it could have been exempted had there  
20 been no transfer. *In re Simonson* (3<sup>rd</sup> Cir. 1985) 758 F.2d 103, 106. Property exempted by the  
21 debtor is generally not liable for payment of administrative expenses. 11 U.S.C Section 522 j(k).

22 A beneficiaries mature life insurance policy is exempt the extent it is "reasonably  
23 necessary" for the support of the debtor and his spouse and other dependents. *In re Pikush* (9<sup>th</sup>  
24 Cir. BAP 1993) 157 BR 155, 156 affirmed (9<sup>th</sup> Cir. 1994). This also applies to annuities. *Supra*.

1 Here, debtors' case was discharged by this Court on or about January 16, 2014, thus the  
2 all personal liability and control of the debtors' estate ceased on that date. The structured  
3 settlement is the result of an annuity which is exempted under California and not subject to  
4 administrative expenses. Moreover, the structured payments come from an annuity which are  
5 only source of income for the Pipkins' debtors. The structured settlement payments are  
6 reasonably necessary for the support of the debtors' because it used for their mortgage payments,  
7 automobile expenses and household expenses.

8 **3. EVEN ASSUMING THERE IS JURISDICTION OVER THE JOHN**  
9 **HANCOCK ANNUNITY; IT IS EXEMPT PURSUANT TO THE CONTRACT**  
10 **AND CALIFORNIA LAW**

11 An individual debtor may exempt certain property belonging to the bankruptcy estate. 11  
12 USC Section 522(b). Property bought into a bankruptcy estate by virtue of the trustee's or the  
13 debtor's avoidance powers is available for exemption if it could have been exempted had there  
14 been no transfer. *In re Simonson* (3<sup>rd</sup> Cir. 1985) 758 F.2d 103, 106.

15 Property exempted by the debtor is generally not liable for payment of administrative  
16 expenses. 11 U.S.C Section 522 j(k). A beneficiaries mature life insurance policy is exempt the  
17 extent it is "reasonably necessary" for the support of the debtor and his spouse and other  
18 dependents. *In re Pikush* (9<sup>th</sup> Cir. BAP 1993) 157 BR 155, 156 affirmed (9<sup>th</sup> Cir. 1994). This  
19 also applies to annuities. *supra*.

20 In California, annuities are exempt under Code of Civil Procedure Section 704.100(c)  
21 Moreover, personal injury awards are exempt if they are reasonably necessary for the support of  
22 the debtor. Moreover, the provisions of the contract specifically on page 6 of Exhibit A to the  
23 Declaration of Donald Pipkins states that it is exempt against creditors.

24 Here, the structured settlement is the result of a personal injury award, debtor Donald  
25 Pipkins received and is exempt because it is necessary to support the debtors. *In re Sylvester* (9<sup>th</sup>

1 Cir. BAP CA 1990) 220 BR 89. The structured payments are a result of an annuity which the  
2 debtor received; and the contract on page 6 of Exhibit A to the Declaration of Donald Pipkins  
3 clearly states it is exempt and protected against creditors which was the intent of the parties when  
4 it was created.

5 The annuity is also exempt under California and not subject to administrative expenses  
6 because it is the functional equivalence of a life insurance policy because it is the only source of  
7 income reasonably necessary for the support of the debtors because it will be used to pay their  
8 mortgage payments, automobile expenses and household expenses. Accordingly, if the Court  
9 does have jurisdiction over the annuity it is exempt both under contract and California law.

#### 10 **4. DEBTORS PROPERLY AMENDED THEIR SCHEDULE C**

11 Debtors can amend their voluntary petition, list of creditors or schedules as a matter of  
12 course at anytime before their bankruptcy case is closed. *In re Michael* (9<sup>th</sup> Cir. 1998) 163 F.3d  
13 526, 529. The debtors can also specifically amend Schedule C as a matter of course to claim  
14 new or revised exemptions at anytime before the case is closed. FRBP 1009(a); *In re*  
15 *Andermahr* (9<sup>th</sup> Cir. BAP 1983) 30 BR 532, 533-534. As long as there is no bad faith or  
16 prejudice to the creditors, the court should allow the amending of Schedule C. *Andermahr* at 533.

17 The debtors properly amended their Schedule C to include revised exemptions for the  
18 annuity. Because the case was not closed and Schedule C was not amended in bad faith by  
19 debtors since this information was provided to the trustee and the debtors fully cooperated with  
20 the trustee office on this matter; and there is no prejudice to the trustee or any creditors; the  
21 amended Schedule C are proper.


#### 22 **5. CONCLUSION**

23 For the foregoing reasons, the trustee's motion should be denied.

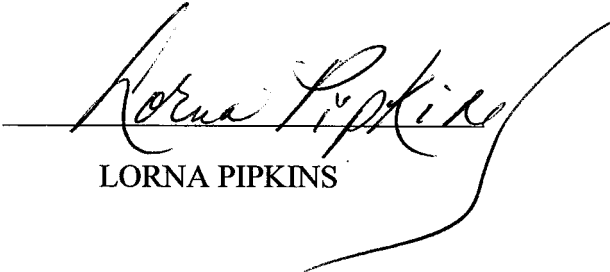
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1 Dated: April 24, 2014

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DONALD PIPKINS

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4  
5 Dated: April 24, 2014

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LORNA PIPKINS